

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

Present:

The Hon'ble Mr. Justice Jayanta Kumar Biswas.

W.P. No. 11933 (W) of 2010

Akhil Kumar Roy

v.

The West Bengal Information Commission & Ors.

Mr Joydeep Kar, senior advocate, with Mr Billwadal Bhattacharyya, advocate, for the petitioner. Mr Pratik Dhar and Ms Joyeeta Chakraborty, advocates, for the State. Mr Raghunath Chakraborty and Mr Monojit Pal, advocates, for the Commission.

Heard on: July 07, 2010.

Judgment on: July 07, 2010.

The Court: - The petitioner is aggrieved by the fact that his second appeal under s.19(3) of the Right to Information Act, 2005 filed as back as May 25, 2009 has not yet been disposed of. He is seeking a mandamus commanding the second appellate authority to decide his appeal immediately.

It has been submitted that the State Chief Information Commissioner exercising the power of the second appellate authority could not decide the petitioner's second appeal because of pendency of a large number of second appeals.

The appeal is to be decided according to the provisions of s.19 read with the West Bengal Right to Information Rules, 2006, r.7.

The provisions of the Act and Rules do not prescribe any period within which a second appeal under s.19(3) is to be disposed of. Section 19(6), however, prescribes the period within which appeals under sub-ss.(1) and (2) of s.19 are to be disposed of. Such appeals are to be disposed of within 30 days from the date of receipt thereof or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.

It appears that the second appellate authority has not yet decided the petitioner's appeal mainly for the reason that the statute has not prescribed any period within which a second appeal is to be disposed of. As rightly submitted by counsel for the petitioner in the absence of any period prescribed for disposing of

a second appeal under s.19(3), the second appellate authority was under an obligation to dispose of the petitioner's second appeal within a reasonable time.

A second appeal arises from a decision in a first appeal under s.19(1), and a first appeal arises from a decision or a failure to give a decision under s.7. The sparkle of a strong strand of speed woven through the sections of the Act is abruptly lost in the second appeal that has been allowed to run wild. This open-ended second appeal scheme is bound to make the s.6 request go totally adrift generating a multi-tier avoidable and unwanted offshoot Court proceedings such as this case.

In my opinion, keeping in mind the respective maximum periods fixed for deciding a first appeal under s.19(1) and disposal of a request for obtaining information under s.7, the second appellate authority should have decided the second appeal within 45 days from the date of filing thereof. In view of the scheme of the statute, I think this period should be considered the reasonable period for deciding a second appeal. I am of the view that this petition should be disposed of directing the authority to decide the appeal.

For these reasons, I dispose of the petition ordering that the second appellate authority shall decide the petitioner's second appeal within 45 days from the date of communication of this order. No costs. Certified xerox.

(Jayanta Kumar Biswas, J.)